is defined in important respects by the doctrine of inherency. Under that doctrine, once a product is sold on the market, any invention that is necessarily present or inherent to the product and that would be recognized as such by a person skilled in the art is itself deemed to be publicly available. Such an invention becomes publicly available art and cannot be patented. See generally *Rosco, Inc.* v. *Mirror Lite Co.*, 304 F.3d 1373, 1380–81 (Fed. Cir. 2002).

To address the possible concern that a uniform available-to-the-public standard might allow secret commercialization of a product followed by belated patenting, I should note that a manufacturer who embarked on such a course would run the risk that, under the first-to-file system, someone else might patent the invention out from under him. Perhaps for this reason, among others, industrialized countries that currently employ this standard do not appear to have experienced significant problems with manufacturers attempting secret commercialization and late patenting of their products.

The bill also includes other provisions that would make the patent system more objective and transparent. Section 3(c) eliminates current law's best-mode requirement, and section 15 strikes several provisions of title 35 that require inquiry into a patentee's subjective intent. Any useful information that might be supplied by describing a patent's best mode generally also will be provided while satisfying the written description and enablement requirements. And because the best-mode requirement turns on the patentee's subjective intent, rather than on objective facts, it often becomes grounds for deposition of the inventor and other discovery. Eliminating that requirement will make patent litigation less burdensome.

My bill also strikes S. 1145's elimination of the exception to the 18-month publication requirement. Small-patent-owners' groups have persuaded me that the current exception should be preserved. That exception, although used only about 40,000 times annually, is invoked heavily by small-business applicants. These smaller applicants believe that the opt-out of 18-month publication allows them to preserve the market advantage generated by their ingenuity, and prevents their inventions' being appropriated in foreign countries, in the event that their application is not granted or is only granted on a second attempt. Under Secretary Jon Dudas, in his June 6, 2007, Judiciary Committee testimony, also expressed doubt about the wisdom of eliminating the current exception. He noted that serious concerns had been expressed ''by independent inventors and small entities that large entities and foreign interests may misappropriate their inventions upon disclosure and prior to issuance of a patent.''

Sections 12 and 13 of the bill are carried over from S. 1145 as reported by the Judiciary Committee. I have included additions to those sections that I understand that their supporters had intended to adopt and have also made an addition of my own to section 12. The new subsection (c) in that section converts various day-based deadlines in title 35 into month-based deadlines. Month-based deadlines are easier to calculate. The use of months should make it easier to avoid the type of ministerial mistake that apparently is the cause for section 12. It should also save the patent system hundreds of billable hours over the years.

Section 2(b) of the bill includes a minor modification to the CREATE Act, Public Law 108–453. This change more closely aligns the text of that act to the PTO's current and uncontested interpretation of that act with regard to who must own the prior art that is regarded as jointly owned by the parties to a joint research agreement pursuant to the CREATE Act.

And last, but certainly not least, section 14 of the bill consists of the Coburn amendment, which would create a revolving fund for PTO fees. Under that amendment, all fees paid by patent and trademark applicants and owners to the PTO would remain in the PTO and could not be diverted to unrelated Government programs.

According to Senator COBURN, the fees collected by PTO are more than adequate to pay for the costs of all patent examinations and other PTO proceedings. But PTO is not allowed to keep those fees. Instead, the fees are deposited into the U.S. Treasury, and PTO's operations are funded by a congressional appropriation. It is that appropriation that effectively determines on an annual basis what portion of the fees that PTO has collected it will be allowed to keep and use.

Since 1992, Congress has diverted over $750 million in PTO fees to other governmental programs. As recently as 2004, over $100 million was diverted from the PTO.

Fee diversion unquestionably has a negative impact on the patent system. In recent years, it has hampered PTO's ability to hire an adequate number of examiners. Multiple studies and multiple witnesses at congressional hearings have concluded that fee diversion contributes to the growing backlog and lengthening pendency of patent applications. It currently takes nearly 3 years to get a patent, and 786,000 applications are pending. That means that large numbers of businesses, universities, and other inventors are waiting to learn if they will receive a patent for their invention.

Because of recent public outcry over lengthy patent-application pendency periods, the administration and Congress have abstained from diverting PTO fees since 2004. As a result, PTO has been able to hire a record number of new examiners and begin to address its backlog of applications. Unless the Coburn amendment is enacted into law, however, Congress and the administration could easily begin diverting PTO fees again in future years. Certainly, any bill that aspires to deserve the title ''Patent Reform Act'' should include a revolving-fund provision.

I thank all of the individuals who have assisted my attempts to understand and find answers to the difficult questions posed by efforts to improve the patent system, and I look forward to next year's congressional debate on patent reform legislation.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION REAUTHORIZATION ACT

Mr. LEAHY. Mr. Presdient, in July, the Senate Judiciary Committee reported the Juvenile Justice and Delinquency Prevention Reauthorization Act, an important bill designed to protect our communities and particularly our most precious asset, our children. I am disappointed that Republican objections continue to prevent this vital bipartisan legislation from passing the Senate this year.

This bill seeks to not only keep our children safe and out of trouble, but also to help ensure they have the opportunity to become productive adult members of society. Senator SPECTER and Senator KOHL have been leaders in this area of the law for decades, and I was honored to join with them once again to introduce this important initiative.

The Juvenile Justice and Delinquency Prevention Act sets out Federal policy and standards for the administration of juvenile justice in the states. It authorizes key Federal resources for States to improve their juvenile justice systems and for communities to develop programs to prevent young people from getting into trouble. With the proposed reauthorization of this important legislation, we recommit to these important goals. We also push the law forward in key ways to better serve our communities and our children.

The basic goals of the Juvenile Justice and Delinquency Prevention Act remain the same: keeping our communities safe by reducing juvenile crime, advancing programs and policies that keep children out of the criminal justice system, and encouraging States to implement policies designed to steer those children who do enter the juvenile justice system back onto a track to become contributing members of society.

The reauthorization that we consider today augments these goals in several ways. First, this bill encourages states to move away from keeping young people in adult jails. The Centers for Disease Control and Prevention concluded late last year that children who are held in adult prisons commit more crimes, and more serious crimes, when they are released, than children with similar histories who are kept in juvenile facilities. After years of pressure to send more and more young people to

adult prisons, it is time to seriously consider the strong evidence that this policy is not working.

We must do this with ample consideration for the fiscal constraints on States, particularly in these lean budget times, and with ample deference to the traditional role of States in setting their own criminal justice policy. We have done so here. But we also must work to ensure that unless strong and considered reasons dictate otherwise, the presumption must be that children will be kept with other children, particularly before they have been convicted of any wrongdoing.

As a former prosecutor, I know well the importance of holding criminals accountable for their crimes with strong sentences. But when we are talking about children, we must also think about how best to help them become responsible, contributing members of society as adults. That keeps us all safer.

I am disturbed that children from minority communities continue to be overrepresented in the juvenile justice system. This bill encourages States to take new steps to identify the reasons for this serious and continuing problem and to work together with the Federal Government and with local communities to find ways to start solving it.

I am also concerned that too many runaway and homeless young people are locked up for so-called status offenses, like truancy, without having committed any crime. In a Judiciary Committee hearing earlier this year on the reauthorization of the Runaway and Homeless Youth Act, I was amazed by the plight of this vulnerable population, even in the wealthiest country in the world, and inspired by the ability of so many children in this desperate situation to rise above that adversity.

This reauthorization of the Juvenile Justice Act takes strong and significant steps to move States away from detaining children from at-risk populations for status offenses and requires States to phase out the practice entirely in 3 years, but with a safety valve for those States that are unable to move quite so quickly due to limited resources.

As I have worked with experts on this legislation, it has become abundantly clear that mental health and drug treatment are fundamental to making real progress toward keeping juvenile offenders from reoffending. Mental disorders are two to three times more common among children in the juvenile justice system than in the general population, and fully 80 percent of young people in the juvenile justice system have been found by some studies to have a connection to substance abuse. This bill takes new and important steps to prioritize and fund mental health and drug treatment.

The bill tackles several other key facets of juvenile justice reform. It emphasizes effective training of personnel who work with young people in the juvenile justice system, both to encourage the use of approaches that have been proven effective and to eliminate cruel and unnecessary treatment of juveniles. The bill also creates incentives for the use of programs that research and testing have shown to work best.

Finally, the bill refocuses attention on prevention programs intended to keep children from ever entering the criminal justice system. I was struck when Chief Richard Miranda of Tucson, AZ, said in a December hearing on this bill that we cannot arrest our way out of the problem. I heard the same sentiment from Chief Anthony Bossi and others at the Judiciary Committee's field hearing earlier this year on young people and violent crime in Rutland, VT. When seasoned police officers from Rutland, VT, to Tucson, AZ, tell me that prevention programs are pivotal, I pay attention.

Just as this administration and recent Republican Congresses have gutted programs that support State and local law enforcement, so they have consistently cut and narrowed effective prevention programs, creating a dangerous vacuum. We need to reverse this trend and help our communities implement programs proven to help kids turn their lives around.

I have long supported a strong Federal commitment to preventing youth violence, and I have worked hard on past reauthorizations of this legislation, as have Senators SPECTER and KOHL and others on the Judiciary Committee. We have learned the importance of balancing strong law enforcement with effective prevention programs. This reauthorization pushes forward new ways to help children move out of the criminal justice system, return to school, and become responsible, hard-working members of our communities.

This legislation seeks to move the country in new directions to protect our communities and give our children the chance they need to grow up to be productive members of society. But we were careful to do so with full respect for the discretion due to law enforcement and judges, with deference to states, and with a regard for difficult fiscal realities.

It is unfortunate that, despite the bipartisan nature of the legislation and the careful consideration and consultation that went into drafting it, Republican objections have prevented this important bill from passing and helping to keep our children and our communities safe. I hope, while there is still time, that all Senators will decide to support and pass this vital reauthorization.

PUBLIC CORRUPTION PROSECUTION IMPROVEMENTS ACT

Mr. LEAHY. Mr. President, more than a year ago, I introduced a bill aimed at restoring Americans' faith in their elected officials. The bipartisan Public Corruption Prosecutions Improvements Act would complement the accomplishments this Congress has made in passing important ethics and lobbying reforms by giving law enforcement additional tools and resources to root out corrupt conduct. Although the Judiciary Committee reported the bill last November, it has been stalled on the Senate floor for nearly a year. In the waning days of this Congress, we should take the opportunity to take up and promptly pass this critical legislation.

Since the bill's introduction, we have seen repeated instances of rampant and corrosive corruption at all levels of government, including at key Federal agencies. Just this month, the Office of Inspector General for the Department of the Interior documented numerous instances where the ''royalty-in-kind'' program—a program that collects billions of dollars from private companies that tap key energy resources—was corrupted by Federal employees who accepted benefits from energy companies ''with prodigious frequency.'' Investigators and prosecutors must have the resources and tools they need to go after this kind of corrupt conduct that compromises America's security. Too often, though, strained budgets and loopholes in existing corruption laws mean that corrupt conduct goes unchecked or simply cannot be prosecuted.

Make no mistake: the stain of corruption has spread to all levels of Government and has affected both major political parties. This is not a Democratic or Republican problem—it is an American problem that victimizes every single one of us by chipping away at the foundations of our democracy. Congress must send a strong signal that it will not tolerate public corruption by providing better tools for Federal investigators and prosecutors to combat it. This bill will do exactly that.

We are also just now learning the role of fraud and perhaps corruption in the catastrophic unraveling of the financial markets and the economy. Prosecutors must have every tool at their disposal to restore accountability. This bill will strengthen the tools prosecutors have to crack down on these insidious crimes.

The bill gives investigators and prosecutors more time and resources to effectively enforce existing anti-corruption laws. Specifically, it extends the statute of limitations from 5 to 6 years for the most serious public corruption offenses. Public corruption cases are among the most difficult and time-consuming cases to investigate and prosecute. Bank fraud, arson and passport fraud, among other offenses, all have 10-year statutes of limitations. Public corruption offenses cut to the heart of our democracy, and a more modest increase to the statute of limitations is a reasonable step to help our corruption investigators and prosecutors do their jobs.